HON'BLE MR. JUSTICE BILAL NAZKI
HON'BLE MR. JUSTICE L. NARASIMHA REDDY
AND
HON'BLE DR. JUSTICE G. YETHIRAJULU

W.P.Nos. 17750 of 1999, 24874 of 2000, 6276 of 2000, 24937 of 2000, 4808 of 2005, 5428 of 2005, 21264 of 2004 and 11048 of 1998

Dt.13.7.2007

Between:

Andhra Pradesh Civil Liberties Committee represented by its General Secretary and others

…Petitioners

And

State of A.P., represented by Secretary Home, and others

…Respondents

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COMMON JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

Petitioner in W.P.No. 21264 of 2004 claimed that her son Gera Kishore was killed by police officials after he surrendered to police. It appears that the deceased was shown as an accused in Cr.No. 301 of 2004 of Ongole Tq. Police Station. On 18.8.2004 at about 7.30 P.M. one Garikamukkala Giribabu was hacked to death. At about 8.00

P.M. Deputy Superintendent of Police, Ongole came to the house of petitioner and questioned her about the whereabouts of her son. The Deputy Superintendent of Police told her that her son was suspected of having killed Garikamukkala Giribabu. Thereupon the petitioner consulted her daughter and son-in-law and at about 9.00 P.M. the petitioner's daughter and son-in-law took Kishore to Ongole Tq. police station. Sub-Inspector of Police, and Circle Inspector of Police were in the police station. In the meantime Deputy Superintendent of Police also came there. The petitioner's daughter and son-in-law handed over Kishore to police, whereupon the Deputy Superintendent of Police promised that he would be taken to court. On the next morning the petitioner was informed by her neighbours who had seen a programme on TV that her son had been killed and police had claimed that he was killed in an encounter. At about 10.00 A.M. some police men came to her house and asked her to come and identify her son's dead body. She was taken to Maddipadu police station limits where her son's body was laid near a teak plantation. The petitioner was surprised to see the dead body of her son at such a place when he had been handed over to the police on the previous day in the police station. The story that was recorded in the records of police was that while a police team under the leadership of 2nd respondent was searching for Kisore in the early hours of 19.8.2004, they saw him near the village of Gajulapalem and he attacked the respondents 2 and 4 with a knife and the 4th respondent- Sub-Inspector of Police opened

fire in self defence and killed him. The petitioner filed a complaint stating the facts and specifically mentioned that the respondents 2 and 3 were responsible for the murder of his son. No investigations have been conducted, no statements were recorded, not even the statements of petitioner's daughter and son-in-law's were recorded who had claimed that they had handed over Kishore to the police. A case was registered in Cr.No. 79 of 2004 under Section 324, 307 and 100 of IPC against the deceased. In the light of these facts, the petitioner sought directions from this Court that the investigations for a case of murder should be conducted against the respondents 2, 3 and 4 and they should be tried in a court of law.

When the matter came up before a Division Bench of this Court, a reference was made to judgment of a Division Bench of this Court in W.P. Nos. 26 and 1229 of 2003. Reference was also made to judgments of Division Benches of this Court reported in *K.G. Kannabiran Vs. Chief Secretary* [1], and *A. Anasuya Vs. S.H.O.* [2] . The Court noted that when W.P.Nos. 26 and 1229 of 2003 were decided, other judgments to which reference has been made hereinabove were not brought to its notice. The Court also found that there was cleavage of opinion between the judgments of division benches of the Court referred to above. Therefore the matter was referred to Full Bench. In this way the matter has come before the Full Bench.

The question is very short, but is important. If there is an encounter and a police man kills a citizen either in an

exchange of fire or in self-defence, whether any case has to be registered for causing the death of citizen. The pattern in Andhra Pradesh which we have seen from various FIRs registered after encounter resulting in death is that an FIR is registered under Section 307 of IPC against the dead person. The learned Advocate General has produced many FIRs which are on file and which show the same pattern that a case is registered under Section 307 of IPC along with some other offences against dead persons, a statement is recorded of a person who makes the report and the matter is closed on the ground that the accused is dead.

I have gone through the judgment prepared by my learned brother Justice L. Narasimha Reddy. Since the questions raised in these writ petitions are very important, I thought it appropriate to give a separate opinion. The matter was heard at length and we have heard learned counsel Sri C.Padmanabha Reddy, Sri K.G.Kannabiran, Sri Bojja Tharakam, Sri K.Balagopal and Sri V. Narayana Reddy, senior advocates and learned Advocate General.

A separate application being WPMP (SR) No. 98369 of 2006 has also been filed on behalf of Andhra Pradesh Police Officers Association. This application and WPMP (SR) No. 98370 of 2006 are allowed and Sri Altaf Ahmed, learned senior counsel was heard on their behalf by us. Before going to the arguments, it will be appropriate to have a look at the judgments pronounced earlier by this Court.

In *P. Narayana Swami Vs. S.I. of Police, Adilabad District and others* [3] a telegram was sent by petitioner

alleging that one Sammireddy A. Srikanth was kidnapped by police and was in police custody. On the same day another telegram was sent to the Chief Justice alleging that in the last week of May police announced that Samireddy (A) Ramakanth and his wife had died in police encounter. But, as a matter of fact, it was alleged that Samireddy was in police custody and somebody else had died in the encounter. Notices were issued and police stated that Samireddy had died in encounter. The Court, while going through the affidavits and counter-affidavits, found that an FIR being Cr.No. 69 of 1996 has been registered in which Samireddy has been shown as accused and Chakrapani, Inspector of Police, Chennur was said to have received bullet injuries, which resulted in his death. Then the Court recorded,

> "Since Sammireddy is stated to have died on account of receiving bullet injury, it is a case in respect of which a crime had to be registered and investigation of his death taken up as a case of culpable homicide. It is true that a case has been registered relating to the death of the police personnel where the death of Sammireddy may also be gone into. But considering the fact that the proper facts are not forthcoming and that more than two months have elapsed, as also the fact that Sammireddy died on account of bullet injury received at his back, we deem it proper that a separate crime should be registered in respect of his death and the matter should be investigated by an independent agency as to whether actually there was an encounter death of Sammireddy."

Coming to the judgment reported in *A. Anasuya Vs. S.H.O.* (2nd supra), in this case writ petitioners sought

directions to the State of Andhra Pradesh to get the matter investigated by an independent agency in terms of the directions issued by the National Human Rights Commission as contained in its letter dated 29.3.1997 addressed to the Chief Minister of the State of Andhra Pradesh. The Court took note of two things, viz., (1) that the matter was pending investigation before the National Human Rights Commission: and (2) that the National Human Rights Commission addressed a letter dt. 29.3.1997 to the Chief Minister. Having taken note of these facts, the Court noted,

> "Having heard the learned counsel for the parties, we are of the opinion that in the facts and circumstances of this case it is desirable that the State Government implements the aforementioned letter dated 29.3.1997, as modified by the National Human Rights Commission. As we do not find any reason as to why the procedure prescribed by the National Human Rights Commission should not be adopted by the State, particularly when the recommendations of the National Human Rights Commission, as modified by the Human Rights Commission, had been accepted by the State. There cannot be any doubt whatsoever that the aforementioned letter dated 29.3.1997 being general in nature, the same would be subject to any other or further directions that might be issued by the National Human Rights Commission in a particular case and in the event of any such specific direction/instruction being issued in the instant case, the same should be complied with."

We will deal with the letter of the Human Rights Commission at a later stage, but from this judgment it

appears that the Court did not decide the questions which have fallen for consideration presently.

Then coming to judgment of this Court reported in *K.G. Kannabiran Vs. Chief Secretary* (1st supra), this judgment is an important judgment as it considered the questions specifically which have again fallen for consideration in the present case. Therefore, the fact situation in which the writ petition was decided by a Division Bench of this Court needs to be mentioned somewhat in detail. Sri K.G. Kannabiran, a senior advocate of the Court and president of the Peoples' Union for Civil Liberties made a mention before the Chief Justice's Court on 27.7.1995 and referred to a news item which appeared on that day in a newspaper. This newspaper reported that an unidentified Peoples' War Group Naxalite was shot dead by the police in an alleged encounter near Ashoknagar under Musheerabad police limits late on Wednesday night i.e., 26/27 July night. Sri Kannabiran had contended before the Court that he had information that one T. Madhusudhanraj Yadav, a trade union leader was reportedly missing. Because of reported alleged encounter, he sought intervention of the Court to enable Yadav's wife and other family members to identify the body of the alleged unidentified Peoples' War Group Naxalite. The body of the alleged Naxalite was reportedly in the mortuary of Gandhi Medical Hospital, Secunderabad. The Court gave directions on the mention of the Advocate and allowed Smt. Swarna and Sri T. Neelakantha Raj Yadav, the wife and father of T. Madhusudhanraj Yadav to see the dead body. It also

directed the Superintendent, Gandhi Medical Hospital, Secunderabad to keep the dead body of the alleged naxalite in the mortuary and not to permit any one to remove the body from the mortuary till further orders of the Court. It also allowed Sri K.G.Kannabiran, Advocate to accompany Smt. Swarna and Sri T. Neelakantha Raj Yadav at the time of identification of the dead body. In pursuance of the order of the Court, the dead body was identified as the body of T. Madhusudhanraj Yadav. Thereafter the learned Advocate made a regular and formal application and sought directions of the Court to direct the Sessions Judge to start enquiry into the killing of T. Madhusudhanraj Yadav so that a report could be submitted to the Court. He also sought directions to the Government to notify the Sessions Judges as Human Rights Courts to take cognizance of all cases of human rights violations as provided under Section 30 of the Protection of Human Rights Act. He also sought a direction to the Director General of Police, Government of Andhra Pradesh to cause production of four persons. Certain directions were given by the Court on 28.7.1995. An affidavit was sought from the State. On behalf of Director General of Police, Andhra Pradesh, Inspector General of Police, Law & Order, Andhra Pradesh filed an affidavit who stated that he had gone through the records relating to Cr.No. 150 of 1995 under Section 307 IPC and 25 and 27 I.A. Act of P.S. Musheerabad and Cr.Nos. 121 of 1988 under Sections 148 and 307 r/w. 149 IPC and some other provisions of law and details of some other FIRs were also given. About the deceased T.

Madhusudanraj Yadav, it was mentioned in the counter,

> "Late Sri T. Madhusudhanraj Yadav, Sri Kurpati Lingamurthy and Sri Vinod of the State Committee are reportedly procuring arms and ammunition including AK-47 from various sources for their armed squads. Deceased T. Madhusudanraj Yadav was the Provincial Committee Secretary of this group since 1988. Warangal district in general and Mulug, Parkal, Eturnagaram, Bhupalpalli and Narsampet areas in particular have been facing the brunt of CPI-ML Pratigatana violence in the form of murders, arson, extortion and coercion."

The police claimed in the FIR, which reads as under,

> "I, D. Venkata Narsaiah, am working as SI of Police, L & O at P.S. Mills Colony of Warangal Town of Warangal District.
>
> The Panibagchi group of CPI-ML is involved in several cases of murders and other cases in our Warangal district through its well organized armed dalams. One Kurapati Lingamurthy a resident of Kasibugga area of Warangal Town is the provincial committee member of the said organization and he is a wanted extremist.
>
> Today we received specific information about the presence of Lingamurthy in Hyderabad city. Hence a special party of our police personnel came to Hyderabad and found the said Lingamurthy near Ashoknagar area in the afternoon. Immediately he was apprehended and on questioning he disclosed that T. Madhusudhanraj Yadav State Secretary of the said group would visit his house to-night to handover him some arms and ammunition in order to dispatch the same to their dalams. As T. Madhusudanraj Yadav is a wanted extremist leader I along with ARPC 1862 Yadagiri went to

> Lingamurthy's house and was lying in wait. At about 8.45 P.M. T. Madhusudhanraj Yadav entered Lingamurthy's house with a bag in his hand. We disclosed our identity and tried to apprehend him. He dropped the bag grappled with us, wriggled away, took out his revolver and fired at us with an intention to kill us. In self-defence we also returned the fire resulting in his instantaneous death. In the scuffle our PC also received injuries. The bag of T. Madhusudhanraj Yadav contains live ammunition of various caliber.
>
> Hence you are requested to take necessary action."

This is the report on which a case was registered against the deceased and no case was registered against the police. Then the learned Judges of the Court went into examining the various provisions of the Code of Criminal Procedure which was termed by the Bench as the hand book for the police to act and arrest any person, investigate the crime and book criminals and then it noted,

> "Proceeding on the assumption that the officers who decided to lie in wait to apprehend the deceased T. Madhusudhanraj Yadav had some sort of authority to arrest him and assuming in favour of the respondents that they had justification to apprehend him as it was necessary for the maintenance of law and order in the district Warangal, we notice, however, that T. Madhusudhanraj Yadav has met his death at their hands and the only report about his death is the one recorded as Crime No. 150 of 1995 of Musheerabad police station. According to the First Information Report, it was he who committed the offence of interfering with the discharge of duty of the informant and others who had come to arrest him. He allegedly grappled with them,

wriggled away, took out his revolver and fired at them with the intention to kill them and in self-defence they returned the fire resulting in his instantaneous death. In the scuffle one constable received injuries. In all these T. Madhusudhanraj Yadav received several bullet injuries and one constable received some injury obviously not caused by a fire-arm. Do we have the law that a group of police personnel will report that they were making arrest of a person who attempted to evade the arrest and since in his attempt to evade the arrest he used force, they returned the force and caused his death and the law would accept the statement and sanctify the end of a life in accordance with the procedure prescribed by law? We have already noticed the guarantee under Article 21 of the Constitution of India and also that the words "procedure established by law" are not ineffective and lifeless but are expressions of the faith of the people who have sanctioned interference with the life of a person only by a procedure which is reasonable, fair and just. Indian Penal Code has defined 'culpable homicide' as follows:

"Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

It is difficult even to imagine that police officers who used fire-arm to hit at the body of T. Madhusudhanraj Yadav were not aware that by such act they were likely to cause his death. Of course, what they did had a justification or not and, although falling within the definition of an offence, the act by them is excusable or not are matters which shall be dealt with but only when

> the truth or otherwise of their plea is tested in accordance with law. It will neither be correct nor proper at the outset to ignore altogether the act of the commission of the offence and not to register a case at all of a homicide at the hands of the police personnel who allegedly fired at T. Madhusudhanraj Yadav. We have given our anxious consideration to the matter before us and we see good reasons to hold at this stage that on the statement of the same very police personnel who have alleged that T. Madhusudhanraj Yadav fired at them, but caused no injury by the fire-arm, and that they fired at him and as a result, T. Madhusudhanraj Yadav got fatal injuries, a case should have been registered and investigated in accordance with law by the competent authorities."

Then comes the other judgment of this Court which is unreported judgment in WP Nos. 26 and 1229 of 2003 again by a Division Bench of this Court. The facts were almost similar. Nine cases were brought to the notice of the Court by the writ petitions and even according to the State, out of said nine cases, in six cases deceased persons were in police custody and police had claimed that they were killed in exchange of fire while they were trying to escape from the police custody by snatching the weapons from the police. The police officers who were responsible for the death of these persons gave complaints to the local police and a crime was registered against the deceased persons under Section 307 of IPC. The Court framed the question which fell for its consideration in the following terms,

> "Thus, the whole lis revolves around whether the criminal prosecution should be

initiated against the police, who participated in the encounter by registering a case under Sections 302 and 201 IPC and whether the practice followed by the police in registering a case under Section 307 IPC against the deceased persons is correct?

This question was answered in the following terms,

> "Simply because FIR is lodged at the behest of the police with respect to an incident resulting in the killing of a person in self-defence attributing to the deceased alleging that the deceased had attempted to murder them, it cannot be said to be a procedure not contemplated under the Cr.P.C. or is unknown to the criminal jurisprudence as argued by the learned counsel for the petitioner."

It also added,

> "Even in the case when FIR has been registered on the information of police, law nowhere prohibits from proceeding against the member of police party in case during investigation sufficient evidence is available that the person killed had not tried to murder the member of the police party and allegations of self-defence are fake."

To the same effect, another judgment was given by the same Bench in WP No.1038 of 2003.

These judgments were mentioned to see as to what was the cleavage of opinion between various judgments of this Court. The main thrust of the arguments of the petitioner is that right to life is guaranteed under Article 21 of the Constitution of India and cannot be taken away except through due process of law and police is not empowered to

take away the life of any citizen. The second limb of the same argument is that if death is caused of a citizen as a result of encounter where police used force in its self-defence, the incident has to be registered and investigated as a homicide and whether the death was caused in self-defence or not is a matter which has to be decided by the courts. The police cannot kill a person and hold on its own that the death was caused in self-defence. Registration of a case against dead person under Section 307 of IPC was a fraud on the rule of law. A case has to be registered for homicide and whether such homicide was caused by a police officer in his self-defence or not has to be investigated.

On the other hand, the arguments of the learned counsel for the respondents is that it is the duty of the police to protect the life and property of the citizens and in the process the police is empowered to use force as and when necessary and if during the process of administering law in order to keep the order any death is caused it cannot be termed as homicide.

Sri Altaf Ahmed, senior advocate appearing on behalf of A.P. Police Officers Association has also submitted arguments to which we will give our attention after going through various provisions of Code of Criminal Procedure.

It is an admitted fact that whatever powers the police may claim to exercise must be found in a statute and we have not been shown by the learned Advocate General or Sri Altaf Ahmed any powers other than the powers conferred on it by the Code of Criminal Procedure with regard to the arrest,

investigation and allied matters. The powers with regard to the present controversy can be traced to Chapter XII of the Code of Criminal Procedure (for short “the Code”). The Chapter XII relates to information to the police and their powers to investigate. Section 154 (1) and (3) is reproduced below for ready reference,

> “154 Information in cognizable cases
>
> (1) Every information relating to the commission of a cognizable offence, if given 'orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
>
> ……..
>
> (3) Any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer- in-charge of the police station in relation to that offence.”

Second proviso to Section 154 is not necessary for the purpose of present controversy.

Bare perusal of sub-sections (1) and (3) of Section 154 makes it clear that when an information relating to commission of a cognizable offence is given to a police officer, he has to, not only, record such information, but if he is satisfied that such information discloses the commission of a cognizable offence, he has to start the investigation immediately either by himself or by an officer subordinate to him. Therefore even if a police officer gives an information to the in charge of the police station that in an encounter a person got killed while police officer was acting in self-defence, it amounts to giving an information of a cognizable offence having been committed because life is lost. Culpable homicide is defined in Section 299 of the Indian Penal Code in the following terms,

> "299 Culpable homicide
>
> -Whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

Much support of precedents is not needed in coming to the conclusion that in an encounter if police officer causes death of a person even in self-defence, it is culpable homicide, but whether it would constitute an offence or not, that would depend on the investigation and the trial, if any. But the police officer who caused the death, may be in self-defence, cannot himself be the judge of his own cause. We are, in this connection, relying on a judgment of the Supreme

Court reported in *Lallan Chaudhary Vs. State of Bihar* [4]. While interpreting Section 154 of the Code of Criminal Procedure the Supreme Court said,

> "Section 154 of the Code thus casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information."

To the same effect, there is another judgment of the Supreme Court reported in *Ramesh Kumari Vs. State (NCT of Delhi)* [5]. The Supreme Court in this judgment held that the provision of Section 154 is mandatory and the police officer concerned was duty-bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case.

The learned Advocate General has also argued with pains that trivial information given to the police officer would not bind him to register a case. But such an argument cannot be accepted in view of the judgments of the Supreme Court referred to above.

Section 155 of the Code is not relevant as it relates to information as to non-cognizable cases. Section 156 lays

down the powers of police officer to investigate cognizable cases and Section 157 gives the procedure for investigation. Section 156 lays down a procedure which is in conformity with the spirit of Section 154 of the Code. There are various other steps which are to be taken and a report has to be filed after completion of investigation under Section 173 of the Code.

The respondents have placed much emphasis on Section 176 of the Code which has also found favour with my learned brother Justice L.Narasimha Reddy. Section 176 of the Code was incorporated by Act 46 of 1983. Section 176 is not in derogation of Section 154 of the Code. Section 176 of the Code lays down,

> "176 Inquiry by Magistrate into cause of death
> (1) when any person dies while in the custody of the police or when the case is of the nature referred to in Clause (i) or Clause (ii) of sub-section (3) of Section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub- section (1) of Section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.
> (2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.
> (3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his

death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

Under sub-section (1) of Section 176 of the Code when a person dies while in police custody, a Magistrate may hold an inquiry into the cause of death which will be either instead of, or in addition to, the investigation held by the police officer. Since there were a rising number of cases in police custody, Section 176 was incorporated in order to ensure the right to life of those persons who are in the custody of police. Section 176 no where controls Section 154 of the Code and even the Supreme Court in the above referred judgment has not taken note of even this section because this section operates for different purposes. There is another reason not to accept the argument that when a person is killed in an encounter or in police custody or in exchange of fire, only an inquiry by Magistrate has to be conducted in terms of Section 176 of the Code because it applies to the deaths of persons in police custody, but not to deaths caused in exchange of fire or in encounter when the person who dies was not in the custody of police.

I n *Union of India Vs. Prakash P. Hinduja* [6] the Supreme Court, after considering Chapter XII of the Code, said in para-13,

“The provisions referred to above occurring

in chapter XII of the Code show that detail and elaborate provisions have been made for securing that an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provisions of the Code. The manner and the method of conducting the investigation are left entirely to the officer in charge of the police station or a subordinate officer deputed by him. A magistrate has no power to interfere with the same. The formation of the opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a magistrate or not as contemplated by sections 169 and 170 is to be that of the officer in charge of the police station and a magistrate has absolutely no role to play at this stage. Similarly, after completion of the investigation while making a report to the magistrate under section 173, the requisite details have to be submitted by the officer in charge of the police station without any kind of interference or direction of a magistrate and this will include a report regarding the fact whether any offence appears to have been committed and if so, by whom, as provided by clause (d) of sub-section (2) (i) of this section. These provisions will also be applicable in cases under Prevention of Corruption Act, 1947 by virtue of section 7-A thereof and Prevention of Corruption Act, 1988 by virtue of section 22 thereof."

The learned Advocate General and other learned counsels appearing for the respondents contended that sections 154 and 176 of the Code require that the police officer should have reason to suspect the commission of a

cognizable offence before he registers a case. This argument has been replied to by the Supreme Court in the judgment which we have referred to above.

Now coming to the other arguments of the learned counsel for the respondents including the written arguments furnished by the impleaded party, it is submitted that Sections 129 to 131 of the Code arms every police officer above the rank of Sub-Inspector with powers to use such force as may be necessary to disperse any unlawful assembly and section 132 specifically protects the police officers acting under Section 129 to 131 of the Code from being prosecuted in any criminal court and all acts done by such police officers would not be deemed to have amounted to the commission of an offence. Sections 23 and 43 of the Police Act, 1861 also cast a duty on the police officers to prevent commission of offences and to apprehend persons for whose apprehension, sufficient ground existed and all such acts shall be protected. These sections fall under Chapter X of the Code which relates to maintenance of public order and tranquility. Section 129 of the Code relates to dispersal of assembly by use of civil force and we fail to understand how these provisions are applicable to the present case and as if a person looses his life while police was exercising its powers under Section 129 (2) of the Code, even then it would be a matter to be investigated upon. It is only after the investigation he could take the benefit of Section 132 of the Code because Section 132 gives protection against prosecution for acts done under the section. Similarly Section 130 of the Code applies to the

armed forces and police is not an armed force within the meaning of Section 132 (3) (a) of the Code where under armed forces are defined to mean the military, naval and air forces and Section 131 of the Code deals with the powers of the armed force officers. In any case, we do not find that a person can claim immunity under section 132 of the Code if a person gets killed in an action by a police officer even without an investigation.

Another argument made on behalf of the respondents is that self-defence is a defence available even under the Indian Peal Code. This argument cannot be accepted in view of settled position of law that self-defence known as private defence under Section 100 of the Indian Penal code is a defence at trial and not at a pre-investigative stage.

In a judgment of the Supreme Court reported in *Kulwant Singh Vs. State of Punjab* [7] the Court dealt with the power of right of private defence. In para-53 the Court held,

> "It is well-settled that the burden to prove the same is on the person who raises such plea. For the purpose of proving the same, the accused may rely upon the materials on records brought by the prosecution in addition to examining the witnesses and adducing positive evidences, if any. A person has a right of private defence of body under Section 97 and in the event it is found that he was entitled to exercise the same, he necessarily must be held to have a right to cause death in terms of Section 100 of the Indian Penal Code, if there was a reasonable apprehension that death or grievous hurt would be caused."

The law on right of private defence would play only at

the time of trial or at best during the investigation, but not before investigation. To the same effect is the judgment of the Supreme Court reported in *V. Subramani Vs. State of T.N.* [8].

Now let us have a look at the other judgments which have been referred to by the parties. In *State of Haryana Vs. Bhajan Lal* [9] to which an elaborate reference has been made by my learned brother Justice L. Narasimha Reddy, the Supreme Court also considered the import of Section 154 and 157 of the Code. In para-36 it held,

> "Section 157 (1) requires an officer in charge of a police station who 'from information received or otherwise' has reason to suspect the commission of an offence that is a cognizable offence - which he is empowered to investigate under S. 156, to forthwith send a report to a Magistrate empowered to take cognizance of such offence upon a police report and to either proceed in person or depute any one of his subordinate officers not being below such rank as the State government may, by general or special order, prescribe in this behalf, to proceed to the spot, to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. This provision is qualified by a proviso which is in two parts (a) and (b). As per clause (a) the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot if the information as to the commission of any such offence is given against any person by name and the case is not of a serious nature. According to clause (b), if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an

investigation, he shall not investigate the case. Ss. (2) of S. 157 demands that in each of the cases mentioned in clauses (a) and (b) of the proviso to Ss. (1) of S. 157, the officer in charge of the police station must state in his report, required to be forwarded to the Magistrate his reasons for not fully complying with the requirements of Ss. (1) and when the police officer decides not to investigate the case for the reasons mentioned in clause (b) of the proviso, he in addition to his report to the Magistrate, must forthwith notify to the informant, if any, in such manner as may be prescribed by the State government, the fact that he will not investigate the case or cause the case to be investigated. S. 156 (1) which is to be read in conjunction with S. 157 (1) states that any officer in charge of a police station may without an order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of the concerned police station would have power to enquire into or try under provisions of Chapter XIII. S. 156 (3) vests a discretionary power in a Magistrate empowered under S. 190 to order an investigation by a police officer as contemplated in S. 156 (1). It is pertinent to note that this provision does not empower a Magistrate to stop an investigation undertaken by the police. In this context, we may refer to an observation of this court in *State of Bihar v. A. C. Saldanha* (1980) 1 SCC 554: 1980 SCC (Cri.) 272) extending the power of the Magistrate under S. 156 (3) to direct further investigation after submission of a report by the investigating officer under S. 173 (2) of the Code. The said observation reads thus: (SCC p.568, para 19)

"The power of the Magistrate under S. 156 (3) to direct further investigation is clearly an independent power and does not 357 stand in

> conflict with the power of the State government as spelt out hereinbefore. The power conferred upon the Magistrate under S. 156 (3) can be exercised by the Magistrate even after submission of a report by the Investigating Officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in S. 173 (8) "

My learned brother Justice L. Narasimha Reddy has referred to para-48 of the same judgment, therefore it is not reproduced. But even in this paragraph the Supreme Court held that what Section 157 of the Code requires is that police officer should have reason to suspect a commission of cognizable offence, and he need not go into the question of involvement of accused in the crime. Therefore the judgment supports the views expressed at the bar by the learned counsel for the petitioners, rather than the view taken by the learned counsel for the respondents.

Mr. Altaf Ahmed, senior counsel appearing for the impleaded respondents has placed reliance on a judgment of the Supreme Court reported in *People's Union for Civil Liberties Vs. Union of India* [10]. This judgment also goes against what has been argued by the learned counsel for the respondents. In this judgment the Supreme Court accepted the power of the Government and the police to make policies and laws to fight terrorism, but it did not condone the death of

persons by police men who were innocent and who were killed in encounter. The question before this Court is not whether the police officer should decide to use force and liquidate a person in his self-defence, but the question is when a person is liquidated by police in an encounter, ambush or shoot-out, whether such death was caused in self-defence or not. Reliance is placed on para-6 of the judgment which is reproduced below,

> "In view of the fact that we have accepted the finding recorded by the learned District and Sessions Judge, it is not possible to accede to the contention of Ms. Janani insofar as the manner in which the incident had taken place. It is true that Manipur is a disturbed area, that there appears to be a good amount of terrorist activity affecting public order and, may be, even security of that State. It may also be that under these conditions, certain additional and unusual powers have to be given to the police to deal with terrorism. It may be necessary to fight terrorism with a strong hand which may involve vesting of good amount of discretion in the police officers or other paramilitary forces engaged in fighting them. If the version of the police with respect to the incident in question were true there could have been no question of any interference by Court. Nobody can say that the police should wait till they are shot at. It is for the force on the spot to decide when to act, how to act and where to act. It is not for the Court to say how the terrorists should be fought. We cannot be blind to the fact that even after fifty years of our independence, our territorial integrity is not fully secure. There are several types of separatist and terrorist activities in several parts of the country. They have to be subdued. Whether they should be fought politically or be

> death with by force is a matter of policy for the government to determine. The Courts may not be the appropriate forum to determine those questions. All this is beyond dispute. But the present case appears to be one where two persons along with some others were just seized from a hut, taken to a long distance away in a truck and shot there. This type of activity cannot certainly be countenanced by the Courts even in the case of disturbed areas. If the police had information that terrorists were gathering at a particular place and if they had surprised them and arrested them, the proper course for them was to deal with them according to law. "administrative liquidation" was certainly not a course open to them."

Therefore, we cannot agree with the contention of the learned counsel for the respondents that there cannot be any investigation when a police man kills a citizen and submits that he killed him in self-defence.

Again reference is made to a judgment of the Supreme Court reported in *Abdul Karim Vs. State of Karnataka* [11]. This again goes to further cement the case of the petitioners. The observation of the Supreme Court on which reliance has been placed by the learned counsel for the respondents is,

> "Self-preservation is the most pervasive aspect of sovereignty. To preserve its independence and territories is the highest duty of every nation and to attain these ends nearly all other considerations are to be subordinated. Of course, it is for the State to consider these aspects and take a conscious decision."

In *State (NCT of Delhi) Vs. Navjot Sandhu* [12] the Supreme Court held in para-275,

> "War, terrorism and violent acts to overawe the established Government have many things in common. It is not too easy to distinguish them, but one thing is certain, the concept of war embedded in Section 121 is not to be understood in the international law sense of inter-country war involving military operations by and between two or more hostile countries. Section 121 is not meant to punish prisoners of war of a belligerent nation. Apart from the legislative history of the provision and the understanding of the expression by various High Courts during the pre-independence days, the illustration to Section 121 itself makes it clear that "war" contemplated by Section 121 is not conventional warfare between two nations. Organising or joining an insurrection against the Government of India is also a form of war. "Insurrection" as defined in dictionaries and as commonly understood connotes a violent uprising by a group directed against the Government in power or the civil authorities. "Rebellion, revolution and civil war" are progressive stages in the development of civil unrest the most rudimentary form of which is "insurrection" – vide *Pan American World Air Inc. V. Aetna Cas & Sur Co.* (505 FR 2d 989 (2nd Cir,1974) (FR 2d at p.1017). An act of insurgency is different from belligerency. It needs to be clarified that insurrection is only illustrative of the expression "war" and it is seen from the old English authorities referred to supra that it would cover situations analogous to insurrection if they tend to undermine the authority of the Ruler or the Government."

There cannot be any dispute on the principles laid down by the Supreme Court, but should the state allow its police officers to kill innocent persons in the name of preservation of sovereignty of the country. Police officials should use required force to preserve the sovereignty of the country and even in the process may be justified in causing death of persons in their self-defence, but who has to decide whether such force was used legally and genuinely. If the power of the police to kill anybody and attribute it to self-defence is accepted, then Article 21 of the Constitution of India would become meaningless.

We have no doubt in our mind that the judgment of this Court reported in *K.G. Kannabiran Vs. Chief Secretary* (1st supra) lays down the law correctly and we hold that in case of any death of a citizen occurring during the course of encounter or a shoot-out or exchange of fire or in police custody, it has to be registered as a case of culpable homicide. We are also in agreement with the judgment of this Court reported in *A. Anasuya Vs. S.H.O.* (2nd supra) in which the Court directed the implementation of the directions contained in the letter dated 29.3.1997 of National Human Rights Commission. The directions are reproduced below,

A. "When the police officer in-charge of a police station receives information about the deaths in an encounter between the police party and others, he shall enter that information in the appropriate register.

B. The information as received shall be regarded as sufficient to suspect the commission of a cognizable offence and

immediate steps should be taken to investigate the facts and circumstances leading to the death to ascertain what, if any, offence was committed and by whom.

C. As the police officers belonging to the same police station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency such as State CID.

D. Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction, if police officers are prosecuted on the basis of the results of the investigation."

The directions given by the National Human Rights Commission are in no way contradictory or in conflict with the law and the learned Advocate General has fairly conceded that the directions given by the National Human Rights Commission are being implemented and the State has already given an undertaking before the Human Rights Commission that the directions would be implemented. In fact the directions contained under A & B are in conformity with the relevant provisions of the Code and our conclusions on the questions before us. Almost 22 years have passed from the date the Supreme Court had given directions to the legislature. The Supreme Court had observed the need for amendment in the appropriate laws so that the police men who commit atrocities on persons are not allowed to escape the clutches of law. In a judgment reported in *State of U.P. Vs. Ram Sagar Yadao* [13] the Supreme Court said,

> "Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the Legislature so that handmaids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection……"

One of the recommendations in this judgment was that law as to burden of proof in such cases may be re-examined by the Legislature so that handmaids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection. This recommendation of the Supreme Court has not been fulfilled by the legislature for the last 22 years. This recommendation was so important that it had been referred to by the Amnesty International in its report as has been mentioned in Constitutional Law of India by H.M. Seervai, Fourth Edition, Volume 2, page 1171. While referring to the case, the

learned author,

> "The grim facts recorded above led the Court to make a recommendation which is of the utmost importance. For, if carried out, it would go far to protect the accused person in the custody of police authorities from custodial violence. The recommendation made by Chandrachud C.J. was so important that an international organization – Amnesty International – which is concerned with protecting prisoners from ill-treatment all over the world has thought fit to mention it in its report."

The directions given by the Human Rights Commission under A, B and C shall be directions of this Court as well in future.

For the reasons given hereinabove, I do not agree with the opinion expressed by my learned brother Justice L. Narasimha Reddy.

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BNJ

Dt.13.7.2007
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NB:
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/BO/

THE HON'BLE MR. JUSTICE BILAL NAZKI,
THE HON'BLE MR. JUSTICE L.NARASIMHA REDDY
AND
THE HON'BLE DR.JUSTICE G.YETHIRAJULU

WRIT PETITION Nos.17750 of 1999, 24874, 6276 and

24937 of 2000, 4808 and 5428 of 2005, 21264 of 2004 and 11048 of 1998

% 13-07-2007

Between:

Andhra Pradesh Civil Liberties Committee,
rep.by its General Secretary & others

…Petitioners

and

The State of A.P. rep. by Secretary, Home Department,
& others

…Respondents

! Counsel for the Petitioners : Sri C.Padmanabha Reddy,
Sri K.G.Kannabiran
Sri Bojja Tarakam, Sri Bala Gopal &
Sri Narayana Reddy

^ Counsel for Respondents : The Advocate General and
Sri Altaf Ahmed

<Gist :

>Head Note :

? Citations:

1. 1996(4) ALD 372
2. 1997(2) ALD 523
3. 2001(2) ALD 87
4. W.P.Nos.26 and 1229 of 2003, dt. 26.9.2003
5. 1992 Supp (1) SCC 335
6. (1997) 3 SCC 433

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THE HON'BLE MR. JUSTICE BILAL NAZKI,
THE HON'BLE MR. JUSTICE L.NARASIMHA REDDY
AND
THE HON'BLE DR.JUSTICE G.YETHIRAJULU

WRIT PETITION Nos.17750 of 1999 & batch

COMMON JUDGMENT: (*Per Hon'ble Sri Justice L.Narasimha Reddy*)

As regards the nature of action to be taken, in the event of death of an individual in an encounter, with the police, conflicting views were expressed, in the judgments rendered by Division Benches of this Court, in different cases. ***P.Narayanaswamy v. S.I. of Police***[14], is a case in which a person, by name Sammireddy @ Sreekanth @ Ramakanth, a member of Labour Organization, affiliated to CPI(ML) Peoples War Group, and two constables died, in exchange of fire on 23.6.1996. The police registered Crime

No.69 of 1996, under Sections 302 and 307 I.P.C. A Division Bench of this Court directed that since Sammireddy died on account of bullet injuries, a separate crime shall be registered, in respect of his death, and that the matter, be investigated by an independent agency, to find out whether the death of Sammireddy, was on account of any criminal acts, attributable to police.

2. ***K.G.Kannabiran v. Chief Secretary***[15], is a case, that related to the death of one T.Madhusudan Raj Yadav, who was also said to be a member of an Extremist Organization. It was taken up on the basis of an oral representation of the petitioner. After passing a series of interim orders, this court ultimately disposed of the writ petition, by entrusting the investigation into the matter, to the CBI. Another Division Bench, in ***A.Anasurya v. Station House Officer, Tadicherla***[16], directed that in cases of this nature, the procedure prescribed by the National Human Rights Commission, in its communication dated 29.3.1996, must be followed.

3. In an unreported judgment, in ***APCLC vs. Chief Secretary***[17], a Division Bench took a different view that wherever an FIR is registered, in relation to exchange of fire between the members of police party and others, resulting in death of any person, the question as to whether the right of self-defence exercised by the police was genuine or not, can also be investigated in the same proceedings. It was indicated that it is not necessary to register a separate case,

in that connection. The same Bench, in another unreported judgment, in W.A.No.1038 of 2003, held that in a case registered, soon after the exchange of fire, the investigation can be caused into several aspects, including the allegations as to killing of an individual by the police officials, without any provocation.

4. In the present batch of Writ Petitions, same issues fall for consideration. In view of lack of unanimity of opinions, in relation to the same subject matter and issue, reference was made to this Full Bench, with a view to resolve the conflict.

5. The arguments on behalf of the writ petitioners were advanced by Sri C.Padmanabha Reddy, Sri K.G.Kannabiran,
Sri Bojja Tarakam, learned Senior Counsel, and Sri Bala Gopal, and Sri Narayana Reddy, learned counsel, representing the respective petitioners.

6. The gist of the arguments on behalf of the writ petitioners is that the police is not vested with the power to kill an individual, even under provocation, and such a course would be in derogation of the very right to life, guaranteed under Article 21 of the Constitution of India and denial of Human Rights. It is urged that the killing of an individual, in self-defence also would, *perse*, be a homicide, and the starting point of enquiry into it, must be registration of a crime under Section 302 of IPC against the concerned police officials. They contend that registration of a crime under Section 307 of IPC in such cases would be a negation of the rule of law and principles of Criminal Law. By analyzing the facts of the cases, the learned counsel point out that the concerned police have played the roles of investigating, prosecuting and adjudicating agencies, in closing the

cases, involving death of individuals, in the hands of police. They strongly insist that the law laid down by this court in ***Narayanaswamy's*** case (1 supra) and ***K.G.Kannabiran's*** case (2 supra), accords with the settled principles, and that the same must be reaffirmed.

7. On behalf of State, the learned Advocate-General advanced the arguments. He contends that it is the duty and function of the police, to protect the lives and properties of the citizens, and in the process, it is permissible for the police, to use force, to the extent it is needed. After referring to the relevant provisions of IPC and Cr.P.C., learned Advocate-General submits that the prescribed procedure has been followed by the concerned Station House Officers, whenever a death has taken place in an encounter. He contends that as and when it is noticed that an individual, whether or not belonging to an extremist group, is found dead, in the course of confrontation with police, Magisterial Inquiry, as contemplated under Section 176 of Cr.P.C., was ordered, and if any unprovoked firing or excessive use of force, on the part of any police official, was noticed, cases were registered under the relevant provisions of IPC, and departmental action was also initiated. He submits that indiscriminate registration of cases under Section 302 IPC, against police officials, would demoralize the force, and the society would be exposed to insecurity. He has placed the facts and figures relating to the incidents involving in extremists violence, and attempted to justify the procedure that is being followed by the police.

8. The A.P. Police Officers' Association, represented by its President, filed an application, with a prayer to implead it as party

respondent in W.P.No.4808 of 2005. The petition is ordered. On their behalf, Sri Altaf Ahmed, learned Senior Counsel, submits that the registration of FIR is governed by the provisions of Section 154 of Cr.P.C., and that no deviation can be made, from it. He contends that the police and armed personnel are endowed with the duty to protect the life and property of the citizens of the country, and to expose them to prosecution, for acts attributable to the discharge of their duties, would lead to a chaotic situation. He contends that the relevant provisions of Cr.P.C. and Indian Police Act, confer requisite power to the police, to meet the situations, posing threat to public peace and tranquility, and in case, any misuse or excessive use of power, on the part of such officers, is noticed, the aggrieved party can certainly move the machinery, as provided for under the Cr.P.C. He too submits that Section 176 of Cr.P.C. provides adequate safeguard, even where no specific complaint is made, as to the cause of death of an individual, in the hands of police. Learned Senior Counsel points out that every death cannot be treated as a homicide, and whoever wants the situation to be treated as such, must invoke the prescribed procedure. He has drawn the attention of this court to the parameters indicated by the Supreme Court, in the context of registration of FIR.

9. Precedents were cited by the learned counsel, appearing for the concerned parties, in support of their respective contentions. Sri K.G.Kannabiran and Sri Altaf Ahmed, learned Senior Counsel, have submitted written arguments also.

10. Blessed, is the society or the country, which is free from violence, or strife. Time and history, however, demonstrate that it is only a wishful thinking. The degree and cause may vary, but the disturbances in the form of armed attacks or struggles are not confined to any particular society or country. Naturally, the Governments of the day, irrespective of its form, has to gear up themselves, to deal with the situations, in accordance with the law governing it. With a semblance of generalization, it can be said that till our

country attained independence, the acts of violence were mostly directed against the Rulers of the day, the British Government or in certain cases, the Provincial Rulers. Even before the country could settle for administering its own people, various conflicting situations arose. Some of them have assumed violent proportions and continue to exist. We are not concerned here, with the causes or factors, that led to the situation. Only a small facet, in the process of dealing with such situations, arises for consideration.

11. Notwithstanding the form of its Government, every country has sovereignty of its own. Social Scientists recognize four characteristics of sovereignty, *viz;* a) protecting the country from external aggression; b) maintaining internal peace and security;
c) adjudication of disputes; and d) levy of taxes to meet the expenditure for administration. With the advent of the concept of Welfare State, the activity of the State had spread into spheres, which, hitherto, were purely private, to its citizens. In the matter of maintenance of internal peace and security, number of Legislations are brought about, to meet the situations, from time to time. While Penal law prescribes the punishment for various acts recognized as crimes, enactments, such as the Cr.P.C., stipulate the procedure. Laws were also enacted, empowering preventive detention.

12. Constitution of India, through Article 21, guarantees to all the citizens, the right to life and liberty. Its purport, which was initially understood in a limited sense, has been expanded through a catena of decisions of Supreme Court, to take in its fold every requirement, to enable a citizen to lead a proper and respectable life. The State action, particularly, the one, which infringes the liberty of an individual, is always tested on the touch stone of Article 21, which mandates that the life and liberty of a citizen cannot be interfered with, or infringed, except through procedure established by law. In the ultimate analysis, the discussion in the present set of cases, turns around the purport of the procedure that is in

vogue, to deal with the situations, involving violent fatal acts, whether they emanate from individuals or groups, or the police.

13. Cr.P.C. is a comprehensive Code, which prescribes a detailed and exhaustive procedure, ranging from initiation to ultimate conclusion of the proceedings. The steps include registration of crimes, investigation, prosecution, adjudication and sentencing. Section 154 Cr.P.C., mandates that every information, relating to commission of a cognizable offence, must be reduced into writing by the Station House Officer, whenever it is received from an informant. A copy of the recorded information is required to be furnished to the informant, free of cost. In case, the Station House Officer refuses to record the information, the aggrieved party is extended the facility of sending it to the Superintendent of Police, through post. The Superintendent of Police is placed under obligation to investigate the case by himself, if he is satisfied that the information discloses commission of offence, or to entrust the same to another police officer. Section 155 of Cr.P.C., deals with the non-cognizable offences.

14. Section 157 directs that if, from the information received through complaint or otherwise, he suspects the commission of offence, the Station House Officer shall send a report of the same, to the Magistrate, with a request to take cognizance of the offence. Thereafter, he can continue the investigation. This, in brief, is the procedure to set the machinery, in the realm of criminal law, into motion, in the normal course.

15. In all the cases in this batch, the allegation is that either the individuals named therein were taken by the police party and killed, thereafter, or that the so-called exchange of fire between the individuals or groups, as the case may be, on the one hand, and the police, on the other hand, is a non-existent affair. The prayer in all these cases is that since the individuals were killed through the bullets from the weapons used by police, cases must be registered under Section 302 I.P.C., against the concerned officials, and further investigation be conducted. It is contended that the question as to whether the death of such an individual takes place, in exercise of right of self-defence by the police officials, must be pleaded and established in the investigation and trial, and not otherwise. The fact that the deaths have occurred in the instances referred in the writ petitions, is not in dispute. Almost in every case, crimes were registered, soon after the occurrence, under various provisions of IPC. It must be noticed that the nature of action to be taken in criminal cases, in relation to death, homicide, culpable homicide and murder, radically varies from each other.

16. The distinction between the terms 'death, homicide, culpable homicide, and murder' is too well known; However, It is essential that few words are said about them, in the present context. Death is a phenomenon that brings about cessation of life of an individual. Causes may vary from ill-health to old age and accident to calamity. It becomes homicide, if the death was inflicted by another individual. In Corpus Juris Secundum, homicide, as understood in the Criminal Law, is described as under:

> "The corpus delicti in criminal homicide involves two elements: (1) The fact of the death. (2) The existence of the criminal agency of another as the cause of death".
> (See Vol.41, page 312)

Some times, death caused on account of misadventure of the person himself, is also treated as homicide. 'Culpable homicide' is defined under Section 299 of IPC, as the one, in which one individual causes the death of another, with an intention to cause it through such bodily injury, as is likely to cause death. Explanations are also added to indicate as to when culpable homicide does not amount to murder. If the commission of

culpable homicide is with clear and premeditated intention, it amounts to murder. This is only a broad statement and is far from an accurate analysis of the phenomenon.

17. The death of an individual, who is found dead in an incident of exchange of fire, between himself or a group of which he is a member, on the one hand, and the police party on the other hand, can certainly result in registration of an FIR, if any complaint is made, attributing specific acts to any individual, be it police or outsider as causes of death. The fact that a person was found dead, without there being a specific complaint, cannot, by itself, result in registration of a case, against any individual. The reasons for this, are stated by the Supreme Court, in several cases. The precautions to be observed in the matter of registration of FIRs have been aptly formulated by the Supreme Court in the ***State of Haryana v. Bhajan Lal***[18], in the following words:

> **Para-48: "**One should not lose sight of the fact that Section 157 (1) requires the police officer to have *reason to suspect* only with regard to *the commission of an offence* which is empowered under Section 156 to investigate, but not with regard to the involvement of an accused in the crime. Therefore, the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the first information report as well in the annexures, if any, enclosed and any attending circumstances which may not amount to proof. In other words, the meaning of the expression "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise. In this connection, we would like to recall an observation of this Court made in *State of Gujarat v. Mohanlal J. Porwal* (1987)2 SCC 364) while interpreting the expression 'reasonable belief'. It runs thus: (SCC p.369, para 4)"
>
> "Whether or not the officer concerned had entertained reasonable belief under the circumstances, is not a matter which can be placed under legal microscope, with an over-indulgent eye which sees no evil anywhere within the range of its eyesight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances." (*See also Pukhraj v. D.R.Kohli (1962 Supp.3*

SCR 866).

Para-49: "Resultantly, the condition precedent to the commencement of the investigation under Section 157(1) of the Code is the existence of the reason to suspect the commission of a cognizable offence which has to be, prima facie, disclosed by the allegations made in the first information laid before the police officer under Section 154(1)".

18. There could not have been any better analysis of the subject, than this. It was held that the suspicion, as to commission of an offence, can result in registration of a case, if only the specific articulate facts, mentioned in the FIR and the enclosures, can lead to a rational inference. Unless the facts mentioned in the complaint give rise to such rational inference, registration of crime or FIR, cannot be resorted to. It is true that, the taking of cognizance of an offence under Section 190 of the Cr.P.C., does not depend upon the receipt of report from the police. Such report is only one of the three sources for taking of the cognizance. The cognizance of the offence can be taken,

a) upon receiving a complaint of facts which constitute such offence;
b) upon a police report of such facts;
c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed

In addition to this, Section 174 of the Code places an obligation upon the Police Officer to immediately give intimation to the nearest Executive Magistrate, if he notices, that a person has committed suicide, or has been killed by another, or by any one, or died under suspicious circumstances etc. Therefore, it is too difficult to accept the proposition, that as soon as the death of an individual is noticed, it must invariably result in registration

of a crime under Section 302, particularly when no complaint is made, attributing any specific acts against any person.

19. It has been argued that the death of individuals in a firing, by Police, cannot be treated on par with other instances, and since hardly any doubt exists, as to the cause of death, case must be registered under Section 302 against the concerned Police officials. It is also contended that the Police, who, as an organization or individual, are not conferred with any power to cause bodily injury to, or death of citizens, and they too must face the legal consequences, as any other citizen for such acts. This, latter aspect will be dealt with, a bit later.

20. As for, the former, assuming that the suspicious needle, points to any police official, about the cause of death of the individual, it is not as if the law is silent on the subject. Cr.P.C. took note of the possibility of the death of citizens, occurring while in custody of the police also. The death in an encounter, cannot stand on a higher footing, than the one, in police custody, in the limited context of the possible culpability of the police officials. Whenever a death takes place, in police custody, the procedure under Section 176 of the Code, is required to be followed. The section reads as under:

"**Sec-176**: ***Inquiry by Magistrate into cause of death***:

(1) When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner

hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry".

21. The enquiry to be conducted by the Executive Magistrate into the cause of death, can be, either in lien of, or in addition to the investigation, by the police, under other relevant provisions. The Executive Magistrate is conferred with all the powers, which are necessary to hold inquiry into an offence. He can record the evidence, examine the dead-body, and ascertain the cause of death. The Executive Magistrate is also placed under obligation to inform the relatives of the deceased person, wherever it is possible. During the course of enquiry, the persons, who have any knowledge about the occurrence, can furnish the information, and it will constitute the basis for the report, that may have to be submitted by the Executive Magistrate.

22. When such is the procedure, where the death of an individual has taken place, while in the police custody, there is no reason as to why the procedure akin to this, cannot be adopted, in cases where the death has taken place, allegedly in the police firing. If the report of the Executive Magistrate, or the result of an investigation, by the police, into such an incident, is not satisfactory, law provides for several remedies, in the form of private complaints, protest petitions, or writ petitions, to ensure that steps contemplated under law are complied with. The report submitted by the Executive Magistrate, shall constitute the basis for further steps under Section 190.

23. At this stage, the procedure contained in Section 157(1)(b) is worth being taken note of. The section reads as under:

Sec. 157: ***Procedure for investigation***:

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that—

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer-in-charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated".

24. The obligation of an in-charge of the police station, under Section 157(1) is twofold: It is his duty to send a report to the Magistrate, about the commission of offence, for taking cognizance, and to proceed to investigate the facts and circumstances of the case. Equally, it is his duty not to take up the investigation of the case, if it appears to him, that there is no sufficient ground for undertaking it. When such is the requirement under law, requiring him to register a case, even where no complaint is received and irrespective of his satisfaction, as to existence of sufficient ground; would be opposed to Section 157.

25. There is an underlying purpose, in prohibiting the

investigation, where sufficient basis does not exists. With the registration of a crime against an individual, he becomes and exposed to several consequences, flowing from it, including the possibility of his being arrested. Facing the social stigma, possibility of being subjected to restrictions on his social life, suspension from service etc., are the consequences, that may follow. Undoubtedly, all these are the facets of Article 21, and the rights of a citizen guaranteed thereunder, cannot be curtailed, except in accordance with the procedure prescribed by law.

26. It has been vehemently contended on behalf of the petitioners that the question, as to whether the police fired at the deceased person, in exercise of right of self-defence, can be examined and decided only during the course of trial, and the investigating agencies cannot be conferred with the power, to absolve a police official, of his complicity, by extending the benefit of right of self-defence. In this contest, it needs to be observed that the right of self-defence, provided for under Section 100 of I.P.C., is available to every citizen, and one does not have to be a police official, to avail it.

27. It is not as if that the omission to register a case under Section 302 against any police official would draw curtain over the whole episode, in a given case of a calculated and pre-meditated murder of a citizen, by the police official, in gross misuse of his power. It is well-known that, whenever an offence takes place, it is not necessary that the investigation and trial must be limited, to those

arrayed as accused or with reference to the provisions of law, mentioned in it. Once a case is registered, under whatever provision, and the investigation is taken-up, the situation may warrant inclusion of new names, deletion of existing ones' and invocation of different provisions, than those cited in the FIR. Cr.P.C. does not prohibit inclusion of police officials, in the list of accused, if, during the course of investigation their culpability is suspected. In addition to this, Section 176 of the Code prescribes the special procedure and investigation by a different agency, duly conferring magisterial powers upon him. Any one, who is posted with the facts, about the death of an individual, in the encounter, or police firing, can certainly take part in the investigation, and supply necessary material.

28. To a specific question as to who should be implicated in a case under Section 302, when a police party comprising of several police officials, some armed, others entrusted with the logistics, in the event of death of an individual in an encounter, Sri Tarakam, learned Senior Counsel, answered that, all the members of the police party has been shown as accused. Such an approach would negate the very procedure prescribed under the Cr.P.C., in relation to registration of crimes, as interpreted by the Supreme Court.

29. Viewed from any angle, registration of a case, under Section 302, straightaway against the police officials in such cases, does not accord with the procedure prescribed under the Cr.P.C.

30. It has been brought to the notice of this Court, that cases are registered against dead persons, under Section 307 of the I.P.C., alleging that they attempted to murder by the police officials, during the operations. Such a course is

totally impermissible. When even according to the report, the person is dead, the question of accusing him, of attempt to murder, does not arise. Further, any investigation into the question, as to whether the death of the person is on account of any indiscriminate use of weapons by the police, without any provocation and other related facts, cannot be carried out, on the basis of a crime registered under Section 307, or the allegations, which are relevant to that provision. In fact, it would amount to contradiction in terms. To this extent, the contention advanced on behalf of the petitioners deserves to be accepted.

31. Extensive submissions were made on behalf of the petitioners, to the effect that the police officials cannot be extended any differential treatment, in the matter of holding them liable for the death or bodily injuries to others, even if it were during the course of discharge of their duties. This issue has legal as well as social angles.

32. The legal angle needs to be examined, with reference to the provisions of certain enactments. Section 46 of Cr.P.C. empowers a police officer, to cause arrest and stipulates the precautions to be taken in the process. It reads as under:

> **Sec.46: *Arrest how made*.**
>
> (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.
>
> (2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.
>
> (3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life".

33. Section 37 of the Code obligates every person to assist the Magistrate, or police officer, in the matters of prevention of escape of a

person, who is to be arrested, prevention of breach of peace, and prevention of injury, attempted to be committed to public property. Section 39 makes it the duty of every person, who is aware of commission of offence, to furnish the information to the nearest Magistrate or the police official. Similar are the obligations of the officials, entrusted with the administration of the affairs of the village, to assist police, in the matter of furnishing information, assistance in the investigation etc. (*See Section 40*).

34. Power of arresting any person, under certain circumstances, even without the order from Magistrate, is conferred on a police officer, under Section 41 of the Code. In fact, the whole of Chapter V, comprising of Sections 41 to 60, deals with the multitude of powers, conferred upon the police, in dealing with the persons accused of committing crimes.

35. Maintenance of public order and tranquility, is dealt with under Chapter-X of the Code. Section 129 empowers the Executive Magistrate, or any Police Officer, not below the rank of Sub-Inspector, to command any unlawful assembly, which is likely to cause disturbance to public peace; to disperse. The nature of the action that can be taken, in case of non-obedience of the command, is stated under sub-section (2) thereof. Section 130 empowers the Executive Magistrate to require the police or the officer in command of Armed Forces, to obey the instructions. Adequate protection is accorded under Section 132, for any acts taken under Sections 129 to 131.

"**Sec.132**:

(1) No prosecution against any person for any act purporting to be done under section 129, section 130 or section 131 shall be instituted in any Criminal Court except—

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces;

(b) with the sanction of the State Government in any other case.

(2) (a) No Executive Magistrate or police officer acting under any of the said sections in good faith;

(b) no person doing any act in good faith in compliance with a requisition under section 129 or section 130;

(c) no officer of the armed forces acting under section 131 in good faith;

(d) no member of the armed forces doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence.

(3) In this section and in the preceding sections of this Chapter,--

(a) the expression "armed forces" means the military, naval and air forces, operating as land forces and includes any other Armed Forces of the Union so operating;

(b) "officer", in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant officer, a petty officer, a non-commissioned officer and a non-gazetted officer;

(c) "member", in relation to the armed forces, means a person in the armed forces other than an officer".

36. Reference in this regard may also be made to certain provisions of Police Act, 1861. Section 23 of that Act enlists the duties of the Police Officials, as under:

Sec.23: ***Duties of police-officers***:- It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters".

37. Section 29 exposes every police officer to punishment, in the form of penalties for neglect of duty. The Police Act also accords protection to the police officials for the acts and omissions, during the course of discharge of their duties. Section 43 reads as under:

"**Sec.43**: ***Plea that act was done under warrant***.-- When any action or prosecution shall be brought or any proceedings held against any police officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate".

38. The Constitution of India confers legislative powers of great

magnitude upon the Parliament and State Legislatures, as enlisted in the respective lists in Schedule VII. Corresponding executive powers are conferred upon the Union and State Governments, under Articles 73 and 162, respectively. In the context of providing safety to the citizens, the Parliament is conferred with the power, under Entry 2-A of List-I of the VII Schedule, for the purpose, to enact laws, for deploying armed forces in any Union Territory or State, in aid of the civil power. Regulation of arms and ammunition is within the exclusive domain of the Parliament, under Entry 5 of the same list. Power to make laws for maintenance of public order, and to organize the police, as a force, to maintain the same, is conferred upon the Legislatures of the States, under Entries 1 and 2 of List II. Administration of criminal justice is, almost entirely dependent upon the participation of, and assistance by the police.

39. When such is the vast role assigned to police, as an agency of the State, it is too difficult to accept that the police officials are to be treated on par with the ordinary citizens, in the context of testing their acts and omissions, in the course of discharge of their duties.

40. At the same time, it cannot be assumed that, an individual, on account of his being a police official, is free to resort to acts, which otherwise amount to crimes. If, during the course of enquiry, as explained in the previous paragraphs, it emerges that there was any lapse on his part, he shall be liable to be proceeded against.

41. The social aspect of the submission, is too wide to be dealt with, in a matter of this nature. At the most, some of its outlines can be touched. It is the duty of the Government, irrespective of its form, or ideological leanings, to protect its citizens. The citizens cannot be left to the mercy of others, who assert their own power or strength. In a country, guided by its constitution, the citizens are required to regulate their acts, in such a way that they accord with the laws, enacted by the agency or authority, conferred with such power. Deviations are to be dealt with, in the manner provided in the concerned laws and regulations. It is in this context, that the law enforcing agencies are created and their powers and functions are delineated.

42. If an individual or a group of persons claim that they have every right to effect the similar rights of other citizens, and if there does not exist any agency, to curb such acts, anarchy prevails. The aggrieved parties have naturally, to organize themselves into a similar groups, or to approach a more powerful group. Such tendencies would negate the very concept of an orderly society, or organized form of Government.

43. It is strongly pleaded that even where an unlawful activity is noticed, the law enforcing agency must not resort to the extreme steps of killing the individual, found to be resorting to such acts. Howsoever acceptable the plea of the petitioners may be, in the ordinary course of the things, certain limitations have to be recognized, in the context of dealing with the terrorist activities of different hues. In most of the cases, it would be a do or die situation, for the persons in the field. Dealing with the nature and amplitude of powers of the Police or Armed Forces, in circumstances of this nature, and the limitation thereon, the Supreme Court observed in ***People's Union for Civil Liberties v. Union of India***[19], as under:

> "…It is true that Manipur is a disturbed area, that there appears to be a good amount of terrorist activity affecting public order and, may be, even security of that State. It may also be that under these conditions, certain additional and unusual powers have to be given to the police to deal with terrorism. It may be necessary to fight terrorism with a strong hand which may involve vesting of good amount of discretion in the police officers or other paramilitary forces engaged in fighting them. If the version of the police with respect to the incident in question were true, there could have been no question of any interference by the court. Nobody can say that the police should wait till they are shot at. It is for the force on the spot to decide when to act, how to act and where to act. It is not for the court to say how the terrorists should be fought. We cannot be blind to the fact that even after fifty years of our independence, our territorial integrity is not fully secure. There are several types of separatist and terrorist activities in several parts of the country. They have to be subdued. Whether they should be fought politically or be dealt with by force is a mater of policy for the Government to determine. The courts may not be the appropriate forum to determine those questions".

44. The Supreme Court proceeded to add a note of caution, that,

if a person, even if a terrorist, can be arrested, he can not be subjected to administrative liquidation. The principle as well as the caution apply to situations, which are presented in these writ petitions.

45. How hazardous it would be, to require that a case under Section 302 I.P.C., must be straightaway registered against a Police Official or Armed Personnel, whenever a death takes place in an encounter; is not difficult to imagine. It may not be possible to know the sequence of events that ensue in encounters, which take place in interior places or forests. Let us examine certain instances, which took place in public gaze.

46. In the recent past, a handful of terrorists entered the premises of the Parliament, when the Session was in progress. They have killed some security guards and journalist, and were about to enter the Parliament House. The C.R.P.F. Jawans, and other Armed Personnel have taken positions and killed all the terrorists. The manner in which the terrorists were liquidated, was recorded and telecast in a fairly detailed manner. Going by the contention advanced on behalf of the petitioners, the first and foremost step, in bringing the process of law into motion, in the above incident must have been, to register a case under Section 302, against the persons, who fired at the terrorists. Since hardly there existed any doubt, as to the role played by the identified Armed Personnel, they ought to have been arrested. The maximum that the country and its system could have extended to them was, an opportunity to plead the right of self-defence in the prosecution. The plea is prone to fail, because the terrorists never intended to attack the police personnel, who fired at them, and their effort was, to enter the Parliament building. According to the strict principles, governing the right of self-defence, there must have been threat to the lives of such armed personnel, and the corresponding justification for firing at the terrorists. The net result would be that the persons, who saved the Council of Ministers, the Members of Parliament and others participating in the Session would be exposed to, an almost certain conviction, for offence under Section 302 I.P.C.

47. Few years ago, an extremist outfit, declared that a piece of land, in a particular village in the State must not be purchased by anyone. Not being aware of this, an individual purchased it, and was cultivating with his own manual labour. His wife brought him the lunch. Right before her, the head of the farmer was separated by a group of the said outfit, and she was made to carry the head alone, to her home. If the police were to have been there, by chance, going by the plea advanced on behalf of the petitioners, they must not have used any force against the persons who have resorted this, because there was no threat to them, much less, the occasion to exercise the right of self-defence. At the most, they could have registered cases against the culprits, if possible, by arresting them.

48. A compartment of a passenger train was set on fire by persons, claiming to be a wing of an extremist organization. About 50 persons died in it. Here again, if there was any scope or possibility in the police to witness it, they were to have waited till the whole exercise is completed and conducted a panchanama, either by arresting the concerned persons on the spot, or by collecting their addresses.

If this is the direction in which the things are to take place, it would not be difficult to imagine as to how close the system is, to the brink of extinction.

49. There are also instances, where persons were picked up from their residences by armed forces or policemen and thereafter liquidated without having any recourse to law. On the specific representations made by the aggrieved persons, the courts have initiated action and the persons found guilty, were proceeded against. The Chief Minster of a State, had to tender resignation, when the stand taken by the Government, as regards disappearance of a student of Engineering College, was found to be incorrect by the Court.

50. Situations of this kind, are on the rise. The causes vary from ideological differences; organized economic offences, or religious upmanship, to operation of alien agencies. Each set has its own dissatisfaction, about the society, at large. As rightly observed by Sri Kannabiran, learned Senior Counsel, in his written-statement, a situation

would emerge;

> "…Where public justice fails, private justice in the form of killings and counter killings will increasingly become the norm as we witness today. And this is against the Constitutional mandate. Rule of law is at its best when it is practiced and adhered to strictly"...

51. It would be an ideal situation, where the Rule of Law is adhered to, and respected by all the concerned. The whole difficulty arises, when one of the players asserts, that he is free to cause harm to some one, at his will, but he is entitled to protection under Rule of Law, at any cost. It is no doubt true, that in the realm of Criminal Law, we do not come across the principles, such as, that the person who seeks equity, must do equity, as it prevails in the Civil Law, or that a person, who does not have regard for Law, is not entitled for the discretionary relief under Article 226 of the Constitution of India.

52. But this much can be said that a person or group cannot, on the one hand, preach and practice killing of innocent people, as part of its activity and on the other hand, plead and clamour for utmost protection, even in the course of curbing their activities.

53. The present state of affairs, which had a direct bearing upon the relief claimed by the petitioners is, the culmination of several factors. The persons operating in such groups, may have their own justification in expressing their dissatisfaction, about the state of affairs prevailing in the society. It would always be idealistic, that a country, or the society subserves the need of all, and no one is left with any dissatisfaction. Achieving this, may no doubt, be a difficult task, but at least, there should be effort in that direction. An average person in the country now feels that individuals are growing at the cost of the society, and the economic growth of the country is at the cost of its Nationhood. But, the determination or resolve of a person or a group of persons, to press their point of view, howsoever noble or justifiable it may be, must not result in loss of life, of innocent persons, or those, who are entrusted with the enforcement of the public duties. In fact, nobody in the control of administration would derive pleasure in liquidating a person, except where he poses threat to the

society. Even if a single innocent person is killed by the State, it would be a sad reflection upon its functioning. Many a time, the violent methods adopted by the groups, would become a good excuse for the indiscriminate and undisciplined persons, vested with the power; to misuse it, to settle their sources.

54. To a substantial extent, the situations of this nature can be traced to the imbalance between Human Rights, on the one hand, and Human Values, on the other. Different kinds of Human Rights recognized at International Conventions, or at National Level, in the ultimate analysis, are the means to ensure that human beings lead their lives with dignity and respectability. In other words, Human Rights can be treated as the device and means to identify, realize and preserve the human values. Human Rights of an individual are to be respected, at any cost. The respectability would increase, if the persons, who claim the enforcement of their rights, respect the similar rights of others also. Concerted and continued efforts are made at International and National levels, to define and enforce Human Rights. However, for their very *raison de etre*, the Human Values, no attention is paid. In fact, one is treated as the antithesis of the other. It is not difficult to discern the logical extension, if the members of a society are conscious of their rights, but are unmindful of the corresponding duties and values.

55. In a lecture delivered in the recent past, at the National Foundation for Law and Social Justice, at Kochi, organized by Justice V.R. Krishna Iyer, the Chairman of the National Human Rights Commission observed:

> "No person who supports human rights can support terrorism which results in a grave violation of human rights of innocent people",

and added a note of caution that:

> "A terrorist who violates human rights of innocent citizens much be punished, but his human rights should not be infringed except in the manner permitted by law".

56. The observations of Justice Learned Hand, an eminent Jurist

and the Champion of Liberty, are relevant in this regard. Delivering a Lecture on the '*Contribution of an Independent Judiciary'*, way back in the year 1942, he said that the Constitutions of countries can only map out the terrain roughly, inevitably leaving much to be filled in. He recognized the 'spirit of moderation' as the fundamental principle of equality and fair-play, under the Constitution, and he said,

> **"[A] society so riven that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save; that in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish".**

57. He posed a question to himself, as to what that spirit of moderation is, and answered thus:

> "It is the temper which does not press a partisan advantage to its bitter end, which can understand and will respect the other side, which feels a unity between all citizens—real and not the factitious product of propaganda—which recognizes their common fate and their common aspirations—in a word, which has faith in the sacredness of the individual". *(See The Spirit of Liberty, by Justice Learned Hand p.164)*

Even if part of this is translated into reality, a greater part of the present strife, would not have existed.

58. Coming to the judgments, whose correctness, is at issue, ***Narayanaswamy v. S.I. of Police*** (1 supra), is a case, where one person, by name, Sammi Reddy died in the firing by the police.

A Division Bench of this Court found fault with registration of a crime under Section 307 of I.P.C., showing the dead person as an accused. Directions were issued for registration of a separate crime, in respect of the death of Sammi Reddy, and for entrustment of the investigation to an independent agency, i.e. Superintendent of Police, C.B.C.I.D. There was no direction, to include the name of any individual in it, before the commencement of investigation. During the course of investigation, if any one is suspected of committing murder of the said person, necessary steps, in accordance with law, can be taken. The attention of the Court does not appear to have been drawn to Section 176 of the Cr.P.C. However, inquiry, or investigation by Executive Magistrate, under Section 176 is in addition to,

or in the place of investigation, conducted by police, it cannot be said that the directions issued in it are in derogation of the procedure under Cr.P.C.

59. Coming to the judgment of this Court in ***K.G. Kannabiran v. Chief Secretary*** *(2 Supra)*, several observations made and findings were recorded, in relation to the death of one Madhusudanraj Yadav in an encounter. Extensive discussion was undertaken, as to the facts and circumstances of the case, that led to the encounter; and about the powers and functions of police officials. At one place, it was observed by the Division Bench, that there was no justification for the police, to lay watch, to apprehend the said individual. It reads as under:

> "…We have found no legal justification for any decision to have lain in wait to apprehend T.Madhusudanraj Yadav because there has been no authorization and the officers who decided to apprehend T.Madhusudanraj Yadav beyond the police station limits at which there were cases registered against him were not authorized to apprehend him within the limits of Musheerabad police station…"

60. It was not disputed that the deceased was accused in several cases for the offence under Section 302 etc. Another observation is to the following effect:

> **"… Do we have the law that a group of police personnel will report that they were making arrest of a person who attempted to evade the arrest and since in his attempt to evade the arrest he used force, they returned the force and caused his death and the law would accept the statement and sanctify the end of a life in accordance with the procedure prescribed by law ?**

61. The Court recorded findings, almost holding certain police officials guilty. Ultimately, the matter was entrusted to the C.B.I for investigation. The attention of the Court does not appear to have been drawn to the procedure prescribed under Section 176 and other related provisions of the Code.

62. As observed earlier, that was a case taken up by the High Court, on an oral mention made by a Senior Advocate, on the basis of a newspaper report. How far it was advisable to come out with a final

pronouncement on several sensitive issues; is certainly a matter of debate. The observations extracted above, would virtually cripple the administration and functioning of the police. The various findings recorded by it, had in fact, left nothing to be investigated. They run contrary to the observations made by the Supreme Court in ***People's Union for Civil Liberties*** case (6 supra), which are extracted in the previous paragraphs. The question, as to whether there was any infraction of law in the operation, resulting in the death of the said individual, must have been left to be investigated or inquired by the machinery, provided for under the Code. If one is tempted to deviate from the prescribed procedure, being impressed by the facts of a particular case, and an exception is carved out, a stage may come, when the exceptions would become predominant and the rule is reduced to redundancy. Even if an exception was justified, the matter must have been left to be investigated, instead of arriving conclusions before hand, or making observation, which would have a bearing upon it.

63. In case the Court is not satisfied, as to the efficacy of the prevailing procedure, it cannot find any justification, to evolve a procedure of its own. It is purely in the realm of Legislature, to prescribe the procedure, in matters of this nature. If an individual, or a section of the society, is not satisfied with the existing law, or finds that it is contrary to the provisions of the Constitution; its validity can certainly be tested in properly constituted proceedings. As long as the provision continues on the statute book, it can neither be ignored, nor can the Court substitute it with another, whatever be the temptation or justification.

64. The judgments in W.P.Nos.26 and 1229 of 2003 dated 26-09-2003 and the one, in Writ Appeal No.1038 of 2003, dated 14-08-2003, the Division Bench took the view, that it is not necessary to register an FIR against the police officials, and the investigation into the allegations of any misuse of power by the police can be carried on, in the case registered, soon after the encounter.

65. In view of the foregoing discussion, it is held that,

a) no crime can be registered under Section 307 of I.P.C., against

a person killed in an encounter.

b) Whenever a person is found dead, out of bullet injuries in an encounter, with the police,

i) if a specific complaint is made, alleging that any identified individual had caused the death of such person, an independent F.I.R. shall be registered in it, if it satisfies the law laid down by the Supreme Court in ***State of Haryana v. Bhajan Lal*** *(5 supra)*,

ii) In the absence of any complaint, the procedure prescribed under Section 176 of the Cr.P.C., shall be followed, without prejudice to any investigation, that may be undertaken by the Police itself.

iii) The Judgment in ***People's Union for Civil Liberties v. Union of India*** (6 supra), does not represent the correct legal position.

The writ petitions are disposed of accordingly.

BILAL NAZKI, J.

L. NARASIMHA REDDY, J.

G. YETHIRAJULU, J.

Dt. 13–07-2007.

PAN/KO*
L.R.copies be marked.

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[1] 1997 (2) ALD 523 (DB)
[2] 2001 (2) ALD 87 (DB)
[3] 1996 (4) ALD 372 (DB)
[4] 2006 AIR SCW 5172
[5] (2006) 2 SCC 677
[6] (2003) 6 Supreme Court Cases 195
[7] (2004) 9 Supreme Court Cases 257
[8] (2005) 10 Supreme Court Cases 358

[9] 1992 Supp (1) Supreme Court Cases 335

[10] (1997) 3 Supreme Court Cases 433

[11] (2000) 8 Supreme Court Cases 710

[12] (2005) 11 Supreme Court Cases 600

[13] AIR 1985 SUPREME COURT 416

[14] 1996(4) ALD 372

[15] 1997(2) ALD 523

[16] 2001(2) ALD 87

[17] W.P.Nos.26 and 1229 of 2003, dated 26.9.2003

[18] 1992 Supp (1) SCC 335

[19] (1997) 3 SCC 433